

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Administration
Honolulu, Hawaii

April 13, 2007

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

**SUBJECT: REQUEST FOR APPROVAL OF DLNR RADIO SYSTEM
MAINTENANCE CONTRACT WITH PACIFIC WIRELESS
COMMUNICATIONS, LLC.**

For your review and consideration is a request to negotiate the FY07 Maintenance Contract for the Department of Land and Natural Resources (DLNR) GreenNet radio system and equipment. The current contract expired on June 30, 2006. This maintenance contract is essential in providing the level of service required to maintain and protect life, natural resources and property as well as the safety of radio system users. The total cost for all DLNR divisions will be \$74,343.99. This maintenance contract is identical to the one currently in place with the exception of additionally covered equipment and assets.

The maintenance contract includes all equipment for GreenNet, including fixed equipment such as repeaters, modems and interface cards, as well as all portable radios, mobile units and desktop consoles.

RECOMMENDATION:

That the Board authorize the Chairperson to negotiate and, subject to necessary approvals, execute the radio maintenance contract for the DLNR (GreenNet)

Respectfully submitted



Lila Loos
Information Technology Manager

APPROVED FOR SUBMITAL:


PETER T. YOUNG, Chairperson

Attachments

STATE OF HAWAII
CONTRACT FOR GOODS AND SERVICES
(IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;
SOLE SOURCE; OR EMERGENCY)

This Contract, executed on the respective dates indicated below, is effective as of
July 01, 20 06, between Department of Land and Natural Resources
(Insert name of state department, agency, board or commission)
State of Hawaii (hereinafter "STATE"), by its Chairperson
(Insert title of person signing for State)
(hereinafter "PROCUREMENT OFFICER"), whose address is 1151 Punchbowl St, Rm 118
Honolulu, HI 96813 and Pacific Wireless Communications, LLC.
(Insert name of company/person)
(hereinafter "CONTRACTOR"), a Limited Liability Company
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of Hawai'i, whose business address and taxpayer
identification number are as follows:
710 Kakoi St, Honolulu, HI 96819. Taxpayer ID: 10544814

RECITALS

A. The STATE is in need of the goods or services, or both, (also referred to as "goods and services"), described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services.

B. This Contract is for (check one box):

☐ (1) A procurement expenditure of public funds for goods and services that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes (HRS), and chapter 3-120, Hawaii Administrative Rules (HAR); or _____; or

☐ (2) A small purchase procurement of goods and services as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

☒ (3) A sole source procurement of goods and services as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

☐ (4) An emergency procurement of goods and services as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. Money is available to fund this Contract pursuant to:
(1) G-02-042--C
(Identify State sources)

or (2) _____
(Identify Federal source)

or both, in the following amounts: State \$ _____
Federal \$ _____

D. The agency's Chief Procurement Officer is Peter T. Young
who ☒ has approved this procurement or ☐ is not required to approve this procurement.

NOW, THEREFORE, in consideration of the promises contained in this Contract,
the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory
manner as determined by the STATE, provide all the goods or services set forth in Attachment 1,
which is hereby made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated in a total amount
not to exceed Seventy-four thousand three-hundred forty-three and 99/100
DOLLARS (\$ 74,343.99), including approved costs incurred and taxes, according to the
Compensation and Payment Schedule set forth in Attachment 2, which is hereby made a part of this
Contract.

3. Bonds. The CONTRACTOR ☐ is required to provide ☒ is not required to
provide ☐ a performance bond ☐ a payment bond ☐ a performance and payment bond in the
amount of _____
DOLLARS (\$ _____).

4. Standards of Conduct Declaration. The Standards of Conduct Declaration of
the CONTRACTOR, is attached and is made a part of this Contract.

5. Other Terms and Conditions. The General Conditions and any Special
Provisions are attached hereto and made apart of this Contract. In the event of a conflict between
the General Conditions and the Special Provisions, the Special Provisions shall control.

6. Liquidated Damages. Liquidated damages shall be assessed in the amount
of _____ DOLLARS (\$ _____)
per day, in accordance with the terms of paragraph 9 of the General Conditions.

7. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the Procurement Officer or the CONTRACTOR shall be sent to the respective address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

Pacific Wireless Communications, LLC

(Insert name of Contractor)

(Signature)

Conrad Loui

(Print Name)

President and LLC Manager *

(Print Title)

March 22, 2007

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

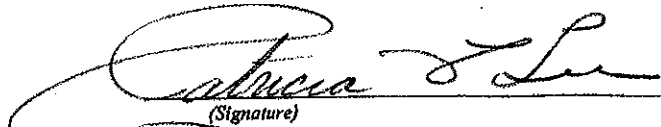
*Evidence of authority of the CONTRACTOR's representative to sign this Contract for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawai'i)
City & COUNTY OF Honolulu) : SS.

On this 22nd day of March, 20 07, before me appeared Conrad Loui and n/a, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that (he/she/they is/are President & LLC Manager and n/a of Pacific Wireless Communication LLC the CONTRACTOR named in the foregoing instrument, and that (he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that (he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

PS
(Notary Seal)


(Signature)
Patricia F Lee
(Print Name)

Notary Public, State of Hawai'i

My commission expires: May 1, 2009

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments or Agencies as Delegated by the Director of Human Resources Development (a.)

Pursuant to a delegation of the authority by the Director of Human Resources Development, I certify that the services provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, Hawaii Revised Statutes (HRS), or if the services under this Contract are not exempted from civil service by §76-16, HRS, they are exempted from civil service by Section 8, Act 230, 1998 Hawaii Session Laws 785, 788.

(Signature)

(Print Name)

(Print Title)

(Date)

- a. Item 1 of this certificate may be used by all department heads and others to whom the Director of Human Resources Development (DHRD) has delegated authority to certify §76-16, HRS, civil service exemptions. The specific paragraph(s) of §76-16, HRS, upon which an exemption is based should be noted in the contract file.

NOTE: If authority to certify exceptions under §§76-16(2) and 76-16(3), HRS, has not been delegated, only the Director of DHRD may certify §§76-16(2) and 76-16(3) exceptions.

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

2. By the Director of Human Resources Development, State of Hawaii (b.)

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from civil service, pursuant to §76-16, Hawaii Revised Statutes (HRS), or if the services under this Contract are not exempted from civil service by §76-16, HRS, they are exempted from civil service by Section 8, Act 230, 1998 Hawaii Session Laws 785, 788.

(Signature)

(Print Name)

(Print Title, if designee of the Director of DHRD)

(Date)

- b. Item 2 of this certificate may be used only by the Director of Human Resources Development (DHRD) or the Director's designee.

NOTE: If authority to certify exemptions under §§76-16(2) and 76-16(3), HRS, has not been delegated, only the Director of DHRD may certify §§76-16(2) and 76-16(3) exceptions.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of Pacific Wireless Communications, LLC, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Contract, if the legislator or employee had been involved in the development or award of the Contract.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Contract by an agency employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Contract by a person who has been an employee of the agency within the preceding two (2) years and who participated while in state office or employment on the matter with which the Contract is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator.

*Reminder to agency: If the "is" block is checked, the agency is required, under section 84-15, HRS, to post a notice of its intent to award the contract and file a copy of the notice with the State Ethics Commission, ten (10) days before entering into the Contract.

6. CONTRACTOR has not been represented or assisted in the award of this Contract for a fee or other consideration by an individual who, a) within the past twelve (12) months, served as an agency employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Contract.

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

DATED: Honolulu, Hawaii, March 22, 2007

CONTRACTOR

Pacific Wireless Communications, LLC
(Insert name of Contractor)

Conrad Loui
(Signature)

Conrad Loui
(Print Name)

President and LLC Manager
(Print Title)

March 22, 2007
(Date)

*Reminder to agency: If the "is" block is checked, the agency is required, under section 84-15, HRS, to post a notice of its intent to award the contract and file a copy of the notice with the State Ethics Commission, ten (10) days before entering into the Contract.

STATE OF HAWAII — DEPARTMENT OF TAXATION
TAX CLEARANCE APPLICATION
PLEASE TYPE OR PRINT CLEARLY

1. APPLICANT INFORMATION: (PLEASE PRINT CLEARLY)

Applicant's Name Pacific Wireless Communications, LLC

Address 710 Kakoi Street

City/State/Zip Code Honolulu, Hawaii 96819

DBA/Trade Name _____

2. TAX IDENTIFICATION NUMBER(S): (Complete applicable ID numbers)

HAWAII TAX ID # W

FEDERAL EMPLOYER ID # 99-0323597

(FEIN)

SOCIAL SECURITY #(SSN) _____

3. APPLICANT IS A/AN: (CHECK ONLY ONE BOX)

- | | | |
|--|--|--|
| <input type="checkbox"/> CORPORATION | <input type="checkbox"/> S CORPORATION | <input type="checkbox"/> TAX EXEMPT ORGANIZATION |
| <input type="checkbox"/> INDIVIDUAL | <input type="checkbox"/> PARTNERSHIP | <input type="checkbox"/> ESTATE <input type="checkbox"/> TRUST |
| <input type="checkbox"/> LIMITED LIABILITY COMPANY | <input type="checkbox"/> LIMITED LIABILITY PARTNERSHIP | |
| <input type="checkbox"/> Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN | | |
| <input checked="" type="checkbox"/> Subsidiary Corporation; enter parent corporation's name and FEIN <u>99-0317808</u> | | |

4. THE TAX CLEARANCE IS REQUIRED FOR:

- | | |
|--|---|
| <input checked="" type="checkbox"/> CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII * | <input type="checkbox"/> LIQUOR LICENSE * |
| <input type="checkbox"/> REAL ESTATE LICENSE | <input type="checkbox"/> CONTRACTOR LICENSE |
| <input type="checkbox"/> FINANCIAL CLOSING | <input type="checkbox"/> BULK SALES** |
| <input type="checkbox"/> HAWAII STATE RESIDENCY | <input type="checkbox"/> PROGRESS PAYMENT |
| <input type="checkbox"/> SUBCONTRACT | <input type="checkbox"/> FEDERAL CONTRACT |
| | <input type="checkbox"/> LOAN |
| | <input type="checkbox"/> OTHER _____ |

* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.

** ATTACH FORM G-8A, REPORT OF BULK SALE OR TRANSFER

5. NO. OF CERTIFIED COPIES REQUESTED:

20

6. SIGNATURE:

Sheldon Miyakado
PRINT NAME

SIGNATURE

Controller

PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

02/22/07

DATE

(808) 837 - 4319

TELEPHONE

(808) 833 - 9800

FAX

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required. Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

FOR OFFICE USE ONLY
BUSINESS START DATE IN HAWAII IF APPLICABLE / /
HAWAII RETURNS FILED IF APPLICABLE 20 20 20
STATE APPROVAL STAMP per [signature] Department of Taxation HONOLULU 99-00171 MAR 9 2007 per [signature] W & I Honolulu
CERTIFIED COPY STAMP MAR 9 2007 per [signature]

CORPORATE RESOLUTION

I, Amy E. Watai, Secretary of PWC GROUP, INC. (Formerly known as Pacific Wireless Communications, Inc), A Hawaii Corporation (the Company), do hereby certify that the following is true and correct copy of a resolution duly adopted by the Board of Directors of said Company in Honolulu, at which a quorum was present and acting throughout: and that said resolution has not been modified, amended or rescinded and continues in full force and effect.

RESOLVED, that the President, vice President, Secretary, Treasurer be, and they are hereby authorized and empowered to sign on behalf of the Company for the purpose of submitting bids and proposals with the United States Government or the State of Hawaii or the City and county of Honolulu, the County of Maui, the County of Kauai, and the County of Hawaii for furnishing any product and services dealt in by said Company: and to execute, deliver and acknowledge on behalf of said Company all necessary for the performance of said contract and agreements.

In witness whereof, I have hereunto subscribed by signature and affixed the seal of said Company this 2nd day of February, 2007


Secretary Amy E. Watai

CORPORATE OFFICERS


William V. Beaulieu
Conrad Loui
Amy Watai
Dale Mau

CEO, President
Director/Treasurer
Director/Secretary
Director

STATE OF HAWAII
CITY & COUNTY OF HONOLULU

} ss.

On this 2nd day of February, 2007 before me personally
appeared Amy E. Watai,
to me know to be the person described in and who executed the foregoing
instrument and acknowledged that he executed the same as his free
act and deed.



Patricia F. Lee
Notary Public, State of Hawaii
My Commission expires May 1, 2009

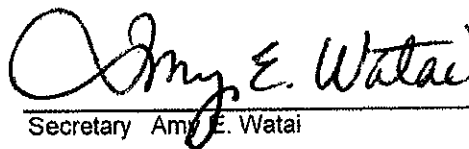
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Clarification of Corporate Resolution

I, Amy E. Watai, Secretary of PWC Group, Inc. do hereby certify that the following is a true and correct copy of a statement to define the responsibilities of Conrad Loui.

Conrad Loui, Director/Treasurer of PWC GROUP, INC and President/Manager of Pacific Wireless communications is hereby authorized and empowered to sign of behalf of the pacific Wireless Communications, LLC (the "Company) for the purpose of submitting bids and proposals with the United States Government of the State of Hawaii or the City and County of Honolulu, the County of Maui, the county of Kauai, and the county of Hawaii for furnishing any products and services dealt in by said Company; and to execute, deliver and acknowledge of behalf of said Company all necessary for the performance of said contract and agreements. As stated in "Limited Liability Company Agreement of Pacific Wireless communications, LLC", Article 6 6.1 Management.

In witness whereof, I have hereunto subscribed by signature this 2nd of February, 2007


Secretary Amy E. Watai

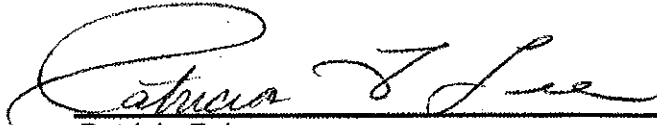
CORPORATE OFFICERS

William V. Beaulieu
Conrad Loui
Amy Watai
Dale Mau

CEO, President
Director/Treasurer
Director/Secretary
Director

STATE OF HAWAII
CITY & COUNTY OF HONOLULU } ss.

On this 2nd day of February, 2007 before me personally
appeared Amy E. Watai,
to me know to be the person described in and who executed the foregoing
instrument and acknowledged that he executed the same as his free
act and deed.



Patricia F. Lee
Notary Public, State of Hawaii
My Commission expires May 1, 2009



LIMITED LIABILITY COMPANY AGREEMENT
OF
PACIFIC WIRELESS COMMUNICATIONS, LLC

This Limited Liability Company Agreement (the "Limited Liability Company Agreement" or the "Agreement") is made this 24th day of May, 2000, to be effective as of the 1st day of January, 2000, by PWC GROUP, INC., a Hawaii corporation (the "Member"), whose business address is 3375 Koapaka Street, Suite D160, Honolulu, Hawaii 96819, as the sole member of PACIFIC WIRELESS COMMUNICATIONS, LLC (the "Company"), pursuant to the Delaware Limited Liability Company Act (the "Act"):

ARTICLE 1

Name; Registered Agent and Address; and Place of Business

The name of the Company is PACIFIC WIRELESS COMMUNICATIONS, LLC. The Company's registered office is located at 1200 Orange Street, Wilmington, New Castle County, Delaware 19801 and its registered agent is The Corporation Trust Company. The Company's principal place of business is 3375 Koapaka Street, Suite D160, Honolulu, Hawaii 96819, or such other place or places as the Member may hereafter determine.

ARTICLE 2

Purpose, Business, and Term of Company

2.1 Purpose and Business of the Company. The purpose of the Company is to engage in any and all business and activities that are permitted by the Act.

2.2 Term of the Company. The term of the Company commenced on the date the Certificate of Formation of the Company was filed with the Delaware Secretary of State in accordance with the provisions of the Act and shall continue in perpetual existence unless and until dissolved and terminated pursuant to this Agreement.

2.3 Applicable Law. Regardless of the place where this Agreement may be executed by the sole Member, this Agreement, the rights and obligations of the sole Member, and any claims and disputes relating thereto, shall be subject to and governed by the Act and the other laws of the State of Delaware.

ARTICLE 3

Membership

3.1 Capital Contribution by Sole Member. PWC Group, Inc., a Hawaii corporation, shall be the sole member of the Company. The sole Member shall make capital contributions to the capital of the Company in the amount of cash, or of the property in-kind, or both, at the times determined by the sole Member.

3.2 No Interest; No Return of Capital. Capital contributions to the Company shall not earn interest, except as otherwise expressly provided for in this Agreement. Except as otherwise provided in this Agreement, the sole Member shall not be entitled to withdraw, or to receive a return of, a capital contribution or any portion thereof.

ARTICLE 4

Capital Account

4.1 Capital Account. A capital account ("Capital Account") shall be maintained for the sole Member in accordance with the provisions of this Article.

4.2 (a) Increases to Capital Accounts. The Capital Account of the sole Member shall be increased by

(1) the fair market value of the sole Member's initial capital contribution and any additional capital contributions (capital contributions of property shall be the fair market value of the property contributed to the Company by the sole Member),

(2) Company income and gain (including income and gain exempt from income taxation) computed in accordance with this Agreement, and

(3) the amount of any Company liabilities that are assumed by the sole Member.

(b) Decreases in Capital Accounts. The Capital Account of the sole Member shall be decreased by

(1) the amount of cash distributed to the sole Member pursuant to any provision of this Agreement, the fair market value of any property distributed to the sole Member pursuant to any provision of this Agreement,

(2) Company deductions and losses computed in accordance with this Agreement, and

(3) the amount of any liabilities of the sole Member that are assumed by the Company.

ARTICLE 5

Allocation of Revenue and Expenses; Allocation of Tax Items

5.1 Allocation of Revenues and Expenses. For purposes of maintaining the sole Member's Capital Account, all of the Company's items of revenue and expenses shall be allocated to the sole Member.

5.2 Allocation of Tax Items for Federal Income Tax Purposes. All items of Company taxable income, gain, loss, deduction, and credit recognized or allowable for Federal income tax purposes shall be allocated and credited or charged to the sole Member.

5.3 Classification for Tax Purposes. The sole Member intends that for federal and state income tax purposes, the Company shall be disregarded as an entity separate from the sole Member pursuant to Treasury Reg. §301.7701-3(b)(1)(ii), and shall not be classified as either: (a) a general or limited partnership under Internal Revenue Code §7701(a)(2); or (b) a corporation under Internal Revenue Code §7701(a)(3). The sole Member further intends that the Company shall be disregarded as an entity separate from the sole Member for federal and state income tax purposes only and shall be and remain an entity separate from the sole Member for all other purposes.

ARTICLE 6

Management of the Company

6.1 Management. The business of the Company shall be managed by the Managers. Except for situations in which the approval of the Members is expressly required by this Agreement, the Managers shall have full and complete authority, power and discretion to manage and control the business and property of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business.

6.2 Certain Powers of Managers. Without limiting the generality of Section 6.1 above, the Managers shall have power and authority, to cause the Company, in its own name:

(a) To acquire (by lease, license, purchase or otherwise) property from any person as the Managers may determine, and to develop, renovate, improve, lease, subdivide, sell, assign, convey or otherwise transfer title to any portion of, or interest in, the Company's property;

(b) To purchase, lease or otherwise acquire or obtain the use of machinery, equipment, tools, staff and personnel, and material, and other types of real and personal property that may be deemed necessary or desirable in connection with carrying on the business of the Company;

(c) To borrow money from banks, other lending institutions, the Managers, Member, or affiliates of the Managers or Member in such amounts and on such terms as the Managers deem appropriate, and in connection with such borrowing, to mortgage, hypothecate, encumber, and grant security interests in the Company's property to secure repayment of the borrowed sums;

(d) To repay in whole or in part, refinance, recast, increase, modify, consolidate, correlate, or extend, on such terms as the Managers may deem proper, any debts of the Company;

(e) To purchase liability and other insurance to protect the Company's property and business;

(f) To contract for the improvement, restoration, maintenance and repair of the Company's property;

(g) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term government obligations, commercial paper, money market mutual funds or other similar investments;

(h) To execute all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;

(i) To employ property managers, brokers, finders, accountants, legal counsel, investment bankers, managing agents, or other experts or employees or agents to perform services for the Company and to compensate them from Company funds;

(j) To enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such forms as the Managers may approve;

(k) To determine the amount of compensation and benefits to be paid to the Managers and other employees of the Company for services rendered by such Managers and other employees;

(l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

6.3 Duties of Managers. Each Manager must discharge his, her, or its duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Manager reasonably believes to be in the best interests of the Company. A Manager may rely on information received from other Persons if that reliance is consistent with the Manager's duties under the previous sentence.

6.4 Number and Appointment. The Managers shall consist of such number of persons as shall be determined from time to time by the sole Member. The Managers shall be appointed by the sole Member and shall serve until their successors shall be duly appointed or until the Manager's death, resignation or removal, if sooner.

6.5 Removal and Replacement of Managers. The sole Member may remove, for any reason, any Manager and shall have the right to appoint a replacement Manager.

6.6 Resignation and Replacement of Managers. A Manager may resign by providing notice to the Member and to all remaining Managers. The resignation takes effect when such notice is given or at a later date stated in the notice. The sole Member shall have the right to appoint a replacement Manager.

6.7 Acts of Managers. Any action or decision requiring the approval of the Managers may be authorized by either: (a) a vote of a majority of the Managers present at a properly called meeting of the Managers, when a quorum is present; or (b) written action without a meeting signed by all of the Managers.

6.8 Meetings. Meetings of the Managers may be called for any purpose or purposes at any time by any Manager. Written notice of each meeting of the Managers, stating the date, time, place and the purpose or purposes, must be given to every Manager at least two (2) business days prior to the meeting. A Manager may waive notice of the date, time, place, and purpose or purposes of a meeting of Managers. A waiver may be made before, at, or after the meeting, in writing, orally or by attendance. Attendance by a Manager at a meeting is a waiver of notice of that meeting, unless the Manager objects at the beginning of the meeting to the transaction of business because the meeting is not properly called or convened, or objects before a vote on an item of business because the item may not properly be considered at that meeting and does not participate in the consideration of the item at that meeting. For any meeting of the Managers, a quorum consists of a majority of the Managers.

6.9 Decisions Requiring the Approval of the Sole Member. Notwithstanding anything to the contrary contained in this Agreement, the following decisions shall require the approval of the sole Member:

- (a) Borrowing any money from the sole Member or accepting or authorizing a Capital Contribution from the sole Member;
- (b) Making any material and substantial change in the purposes of the Company or the character of its business;
- (c) Amending or modifying this Agreement or the Articles of Organization;
- (d) Admitting a new Member to the Company;
- (e) Selling, transferring, conveying, exchanging, leasing, encumbering, pledging or otherwise disposing of all or substantially all, of the assets of the Company; and
- (f) Merging, consolidating or combining the Company into or with any organization.

ARTICLE 7

Amendment of Agreement

This Agreement supercedes and amends in its entirety that certain Limited Liability Company Agreement dated October 19, 1995. Any further amendment or supplement to this Agreement shall only be effective if in writing and if the same shall be consented to and approved by the sole Member.

ARTICLE 8


Dissolution

The Company shall be dissolved, and shall terminate and wind up its affairs, upon the determination of the sole Member to do so.

IN WITNESS WHEREOF, the sole Member has executed and delivered this Limited Liability Company Agreement as of the day and year first above written.

Sole Member:

PWC GROUP, INC.

By 
Its President

STATE OF HAWAII REQUEST FOR SOLE SOURCE

05 APR -8 P2:58

TO: Chief Procurement Officer

 FROM: Land and Natural Resources/Forestry & Wildlife/Admin
 (Department/Division/Agency)
STATE PROCUREMENT OFFICE
STATE OF HAWAII

Pursuant to §103D-306, HRS, and Subchapter 9, Chapter 3-122, HAR, the Department requests sole source approval to purchase the following:

Description of goods, services, or construction:

Radio Maintenance Contract for DLNR "Green Net" radio system equipment statewide. Items on the Maintenance Contract include repeaters, desktop consoles, system interface cards (modems), portable and mobile radios, base stations and remote stations. Vendor must meet performance criteria for rapid response on all repairs.

Name of Vendor:

 Address: Pacific Wireless Communications, LLC
 710 Kakoi St., Honolulu, HI 96819

Cost:

approx \$85,000

Term of Contract:

From:

July 1, 2005

To:

June 30, 2007

Prior Sole Source Reference No.:

 01-35-R, 997-115-R,
 03-47-R

The goods, services, or construction has the following unique features, characteristics, or capabilities:

The DLNR "Green Net" radio system provides communications for DLNR staff and cooperators in remote areas of the state. This infrastructure is used for fire fighting, emergency response, search and rescue and law enforcement. Rapid response in case of equipment failure is critical in protecting human life and property.

Pacific Wireless Communications (PWC), LLC is the only radio equipment maintenance vendor in Hawaii that can provide statewide "end-to-end" maintenance and repair services.

REQUEST FOR SOLE SOURCE (Cont.)

How the unique features, characteristics, or capabilities are essential for the agency to accomplish its work:

Only PWC has the infrastructure to support a complete inventory of spare parts and replacement equipment for critical infrastructure including repeaters, base stations, mobile and portable radios. In addition, the Division's radio system is tied into the Statewide microwave system, which is also maintained exclusively by PWC.

The following other possible sources for the goods, services, or construction were investigated but do not meet our needs because: In 1995 DLNR submitted its radio contract for competitive bid. Pacific Wireless Communications (then a division of Motorola) was the only bidder. Since that time, we have not seen any changes in the ability of any other vendor such as Diversified Communications, CQ Communications and Delta Communications to provide comprehensive maintenance services for land/mobile radio systems or microwave systems.

Direct questions to: Ronald Cannarella

Phone: 587-4189

I certify that the information provided above is to the best of my knowledge, true, correct and that the goods, services, or construction are available through only one source.


Department Head or Designee

Date

Title (if other than Department Head)

Chief Procurement Officer's comments:

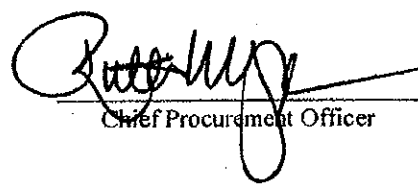
This approval to use the selected vendor is limited to Motorola manufactured radio equipment only. The DLNR should use appropriate procurement methods to obtain maintenance for radio equipment not manufactured by Motorola since the selected vendor is not the sole source provider of maintenance for this equipment.

Please ensure adherence to applicable administrative and statutory requirements.

Expenditure may be processed through a purchase order: Yes ☐ No ☐. If no, a contract must be executed and funds certified.

☒ APPROVED

☐ DISAPPROVED


Chief Procurement Officer

4/19/05
Date

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MEASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE ENFORCEMENT
DIVISION
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KATOLAHU ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 2, 2007

Mr. Bernard Kuehu
Customer Resource Manager
Pacific Wireless Communications, LLC.
710 Kakoi Street
Honolulu, HI 96819

RE: FY2007 Pacific Wireless Communications, LLC. (PWC) Maintenance Contract

Dear Mr. Kuehu:

Enclosed, please find the radio system maintenance contract for the Department of Land and Natural Resources (DLNR) for fiscal year 2007 (July 1, 2006 to June 30, 2007.) Kindly provide a quotation including per-unit prices, taxes, sub-totals and totals for the following listed equipment at the quantities indicated:

Equipment Type	Quantity	Unit Price	Unit Total	Tax	Sub Total	Grand Total
Base	9					
Charger	1					
Comparator	1					
Console	5					
Encoder	1					
Mobile	307					
Portable	233					
Remote	31					
Remote Tone	1					
Repeater	11					
Repeater-Portable	2					
Repeater-Small	8					
Grand Total	610					

(Continued on next page)

Additionally, please complete and have notarized where indicated the following associated documents:

- ☐ Contract signed by PWC's General Manager.
- ☐ Standards of Conduct Declaration
- ☐ Contractor's Acknowledgement (Notarize)
- ☐ Affidavit of PWC's General Manager (Notarize)
- ☐ State of Hawai'i Tax Clearance
- ☐ Certificate of Secretary
- ☐ Copy of Management Agreement
- ☐ Price Quotation

Mahalo to you and the staff at PWC for all of your efforts in this regard.

Aloha,



Allen S. Hanaïke
Telecommunications Planner



Pacific Wireless Communications, LLC

PWC Building, 710 Kakoi Honolulu, HI 96819
Telephone: (808) 837-4310 Facsimile (808) 837-4351
Contractor's License C-20785
March 5, 2007

Mr. Allen Hanaïke
Telecommunications Planner
State of Hawaii – Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl St. Rm118
Honolulu, HI 96813

Dear Mr. Hanaïke:

Please review the breakdown for DLNR radio system maintenance contract for the period of July 1, 2006 to June 30, 2007. I broke it down for you as requested. If you have any questions, please feel free to contact me at 808-837-4310 or my cell#808-478-9455'

Mahalo,


Bernard Kuehu
Customer Service Manager

Equipment Type	Quantity	per unit	total	tax	subtotal	total
Base Station/Consolettes	9	\$ 45.00	\$ 405.00	\$ 16.88	\$ 421.88	\$ 5,062.52
Charger	1	\$ 15.00	\$ 15.00	\$ 0.63	\$ 15.63	\$ 187.50
Comparator	1	\$ 100.00	\$ 100.00	\$ 4.17	\$ 104.17	\$ 1,250.00
Console-boat	1	\$ 15.00	\$ 15.00	\$ 0.63	\$ 15.63	\$ 187.50
Console-Office	1	\$ 45.00	\$ 45.00	\$ 1.88	\$ 46.88	\$ 562.50
Console-Dispatch	3	\$ 150.00	\$ 450.00	\$ 18.75	\$ 468.75	\$ 5,825.02
Encoder	1	\$ 15.00	\$ 15.00	\$ 0.63	\$ 15.63	\$ 187.50
Mobile	303	\$ 6.50	\$ 1,969.50	\$ 82.07	\$ 2,051.57	\$ 24,818.83
Portable	237	\$ 5.00	\$ 1,185.00	\$ 49.38	\$ 1,234.38	\$ 14,812.55
Remote	31	\$ 6.50	\$ 201.50	\$ 8.40	\$ 209.90	\$ 2,518.76
Remote-Tone	1	\$ 6.50	\$ 6.50	\$ 0.27	\$ 6.77	\$ 81.25
Repeater	11	\$ 100.00	\$ 1,100.00	\$ 45.84	\$ 1,145.84	\$ 13,750.04
Repeater-Portable	2	\$ 40.00	\$ 80.00	\$ 3.33	\$ 83.33	\$ 1,000.00
Repeater-small	8	\$ 45.00	\$ 360.00	\$ 15.00	\$ 375.00	\$ 4,500.01
Grand Total	610	\$ 594.50	\$ 5,947.50	\$ 247.83	\$ 6,195.33	\$ 74,343.99

Maui
347-A Ano Street
Kahului, HI 96732
(808) 871-8873

Hilo
500 Kalaniano'le Ave
Hilo, HI 96720
(808) 935-5445

Kauai
2976 Aukele Street Ste B3
Lihue, HI 96766
(808) 245-3927

Toll-Free To Oahu from the Neighbor Islands (800) 327-1949

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of services.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall

comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 237-45, HRS, and paragraph 17 of these General Conditions.

- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment Contract in which the

STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR's obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR's articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- c. Reports. All assignment Contracts and amendments to this Contract effecting changes of the CONTRACTOR's name or novations hereunder shall be reported to the CPO within thirty days of the date that the assignment Contract or amendment becomes effective.
- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds Contracts with more than one purchasing agency of the State, the assignment Contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR

is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

10. State's Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other Contracts or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 126, Procurement Rules, as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer, may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop work orders shall not exceed sixty consecutive days and shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR's duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR's rights under chapter 126, Procurement Rules. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such provision.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.
 - (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, Procurement Rules, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete Contract under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
- (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the Contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles) of the Procurement Rules and the following guidelines:
- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures: Final Payment: Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
- (1) Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 237-45, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.
 - c. Agency procurement officer. By a written order, at any time, and without notice to any surety, the Agency procurement officer, subject to mutual consent of the parties to this Contract and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:
 - (A) Drawings, designs, or specifications;
 - (B) Method or place of delivery;
 - (C) Description of services to be performed;
 - (D) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (E) Place of performance of the services; or
 - (F) Other provisions of the Contract accomplished by mutual action of the parties to the Contract.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in Contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written Contract of modification is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a Contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim under this Contract or for a breach of contract.

- g. CPO approval. If this is a professional services Contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial Contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
 - i. Sole source Contracts. Amendments to sole source Contracts that would change the original scope of the contract may only be made with the approval of the CPO. Annual renewal of a sole source Contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within thirty (30) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the STATE is prejudiced by the delay in notification.

- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the Contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By Contract on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of Contract between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126 of the Procurement Rules.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122 of the Procurement Rules.

22. Variation in Quantity for Definite Quantity Contracts. Upon the Contract of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the CPO makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another Contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement Contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);

- (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new Contract estimated cost and, if this Contract is incrementally funded, the new amount allotted to the Contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any State employee, including the head of the purchasing agency, the CPO, the DIRECTOR, the Agency procurement officer, or to the services or goods, or

both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to:
 - a. The cost or pricing data, and
 - b. A State contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency purchasing officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for Contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is

established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Contract.
36. Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules, the Procurement Rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the Contracts, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior Contracts, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no Contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE's rights or the CONTRACTOR's obligations under the Procurement Rules or statutes.

SCOPE OF SERVICES

Statewide Radio Maintenance Service

- 1.1 The CONTRACTOR shall provide all materials, parts, and labor to provide such preventive and corrective maintenance to meet the operational availability of the equipment listed in Attachment 1 as required.

Except as specified in this Contract, the CONTRACTOR disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

- 1.2 The CONTRACTOR shall submit to the PROCUREMENT OFFICER the results of the communications equipment frequency deviation and antenna power input measurements test as required by FCC once each twelve months.
- 1.3 In the event that a particular unit or units being maintained under the contract reaches an age or condition which makes it impractical or impossible to repair, the CONTRACTOR shall give notification of any such condition at least sixty (60) days prior to any necessary repair of any such unit.
- 1.4 The CONTRACTOR shall provide engineering support to the Department as included on this contract. These services will consist of, but are not limited to:
- a. Recommendations for redesigning or upgrading the various elements of the system including:
 - 1. Coverage surveys
 - 2. Equipment list
 - 3. Budgetary projections
 - b. Technical assistance where new equipment or interference with other equipment required.
 - c. Site inspections - preventive maintenance inspections every 6 months.
 - d. Interference studies - where interference occurs or new site planned.

- 1.5 CONTRACT EXCLUSIONS - This contract shall not include the maintenance cost of any transmission line, antenna, or tower. Such maintenance shall be furnished upon request by the Department at material and labor rates prevailing at the time of each call. Maintenance cost of all batteries is also not included in this contract. Maintenance does not include the repair or replacement of equipment which has otherwise become defective including, but not limited to, damage caused by accidents, physical or electronic abuse or misuse of the equipment, acts of God, fires, flooding or other casualty or damage resulting from the equipment's exposure to environmental conditions not attributable to the CONTRACTOR's responsibility. CONTRACTOR shall be responsible for the cost of replacement and/or repair(s) to the equipment which the STATE determines to be due to Contractor's negligence or noncompliance to the terms and conditions of this contract
- 1.6 All related communications equipment must be maintained in accordance with manufacturer's standards, but not limited to, the following guidelines:
- a. Original manufacturer's parts or equivalent will be used for all repairs.
 - b. Oil, water, dust and foreign substances will be removed from the equipment.
 - c. Due care will be exercised to prevent further physical damage to the equipment.
 - d. CONTRACTOR will, within 30 days of assuming responsibility for maintenance under this contract, notify the STATE of equipment which in the opinion of the CONTRACTOR cannot be maintained to such a standard as to assure satisfactory operation and the cost to bring said equipment to a satisfactory level of operation. With due respect for equipment age, equipment will be maintained at a level to assure satisfactory operation of the system and in accordance with

applicable manufacturer's published specification where practical.

- e. Routine maintenance procedures prescribed by the manufacturer will be followed.
- f. All maintenance work will be done by a qualified technicians, either licensed by the FCC, certified by the equipment manufacturer or one of the various electronic programs now in existence. (Examples: National Association of Business and Educational Radio (NABER) technician certification; Association of Public Safety Communications Officer (APCO) technician certification.)
- g. At a minimum, all equipment will receive one (1) FCC performance inspection (MEASUREMENTS, ADJUSTMENTS, AND PARTS REPLACEMENT) at intervals as specified in accordance with individual transmitter requirements.
- h. Performance checks shall be made every six months on all base stations and auxiliary equipment and repeaters. Equipment will be optimized in accordance with applicable factory specifications.

Work Schedule

- 1.7 PERIOD OF MAINTENANCE SERVICE - Maintenance services shall be performed during normal working hours between 7:00 a.m. to 5:00 p.m., Monday through Friday except weekends and State holidays.
- 1.8 TROUBLE CALLS - Trouble calls are services required between scheduled maintenance. Trouble calls will normally be initiated during normal working hours. Trouble calls shall be included under this contract.
 - a. CONTRACTOR shall respond to trouble calls by the next working day within twenty-four (24) hours of reported problem on the islands of Kauai, Oahu, Maui and Hawaii and within forty-eight hours (48) for the islands of Molokai and Lanai **except for**

trouble calls involving repeaters and dispatch consoles, which CONTRACTOR shall respond within fifteen (15) hours of reported problem.

Exceptions will be allowed for equipment located on Lanai and Molokai, where service will be provided as soon as practical depending on transportation. All mobile and portable radios shall have seventy-two (72) hours turn around time of repair. CONTRACTOR shall be responsible for providing loaner mobile and portable radios when repair(s) is estimated to exceed seventy-two hours. Loaner mobile and portable radios provided by the CONTRACTOR shall be equal in performance and design specifications of radios being repaired. The time frame requirements for CONTRACTOR'S response of 15, 24, 48 and 72 hours shall not include weekends and State holidays.

b. Trouble calls initiated after normal working hours (section 1.7) by an authorized technical representative, will have the labor billed at the prevailing fees and rates. All replacement parts are covered under the contract. Any authorized trouble calls responded to by the CONTRACTOR after normal working hours, where no problem was attributable to the Green Net System and its components, will be billable for the minimum one hour of labor at the prevailing fees and rates.

The CONTRACTOR shall provide to the Department a current record of maintenance on each piece of equipment every time the CONTRACTOR performs work on it. The record will consist of work tickets which are legible and suitable for making legible copies on a copying machine. The work ticket will contain identification and location of equipment, services, "as found" and "adjusted to," measurements and FCC check.

General Terms and Conditions

- 1.9 All reasonable efforts shall be expended by the CONTRACTOR to restore system to full operations as soon as possible after notification of failure and within the time frames required herein. Neither the CONTRACTOR nor the STATE shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God; fire; strikes; material shortages; compliance with laws or regulations; riots; acts of war; or any other conditions beyond the reasonable control of the party or parties. Reasonable control under this Contract will be at the sole judgment of the PROCUREMENT OFFICER.
- 1.10 Maintenance work on all equipment except for mobile and portable equipment shall be at the site of installation. Mobile and portable equipment may be maintained at local maintenance shops except for mobile equipment on Molokai and Lanai, which must be maintained on site. Any mobile or portable equipment listed as being on contract must be accepted for repair at any of the maintenance shops regardless of which island the radio came from.
- 1.11 The CONTRACTOR will have, as a minimum, maintenance facilities located on the islands of Oahu, Maui, Hawaii, and Kauai. Each facility will, as a minimum:
- a. Have two full-time maintenance technicians capable of performing service on all items of equipment designated for that area. Technicians need not be dedicated solely to the Department of Land and Natural Resources, but as a minimum, one must be available to respond within time frame listed under paragraph 1.7.
 - b. Maintain a sufficient stock of spare parts to support equipment covered under this contract for that area. CONTRACTOR to determine logistical requirement.

- c. Maintain at least two maintenance vehicles capable of driving to all sites located in its designated area except for Lanai and Molokai. CONTRACTOR must have access to 4-wheel drive vehicle on Lanai.
- d. Have a full set of maintenance publications for type of equipment located in its designated area.
- e. Have the following or equivalent test equipment.
[All model numbers are of MOTOROLA test equipment, except HP refers to HEWLETT-PACKARD, and CE and EIP to Cushman equipment.]
 - (1) R1029B Oscilloscope
 - (2) R1800A Digital Analyzer (Prom reader and code plug)
 - (3) EI 545 MW Frequency Counter
 - (4) HP8614 MW Signal Generator
 - (5) CE-24 Selective Meter
 - (6) HP654 Test Oscillator
 - (7) HP432 MW Power Meter
 - (8) HP Variable Attenuator Kit
 - (9) R1009 Deviation Calibrator
 - (10) R2001 Communication System Analyzer
 - (11) R1035A Frequency Counter
 - (12) R1100A Tone Generator
 - (13) S1339A RF Millivolt meter
 - (14) S1350C Wattmeter
 - (15) R1037A Digital Multimeter

- (16) R1033A Radio Test Set (4 portables)
 - (17) RTC 1000 Meter and Control TEK 5F Panel
 - (18) Special cables, extender boards, specialized test equipment, etc., necessary to perform maintenance to manufacturer specifications for that equipment under its jurisdiction.
- f. The contractor should have available a spectrum analyzer covering all frequency bands utilized in the Green Net System. Spectrum analyzer may be centrally located.
- 1.12 Upon 30 days written notice to the CONTRACTOR, the Department shall have the option to add or delete equipment upon the same conditions for a term expiring at the end of the Contract. In the event the Department adds or deletes equipment, the original equipment list shall be revised to reflect such change in equipment.
- 1.13 The CONTRACTOR shall submit a final report of system status, based on their assessment of preventive maintenance, and performance inspection records, to the Department no later than **June 15, 2007**. The report shall include, as a minimum, an assessment of system adequacy by county; individual site status; recommendations for equipment replacement; recommendations for system upgrade.
- 1.14 The CONTRACTOR shall assist telephone troubleshooters in resolving problems relating to the radio network telephone control line circuits. The CONTRACTOR will dispatch a qualified technician to assist the telephone troubleshooters as required. The technician should coordinate with the telephone troubleshooter to determine what assistance he can provide.
- 1.15 The CONTRACTOR shall assist the U.S. Coast Guard in resolving problems related to Forestry microwave interconnects with the Rainbow Microwave System.

SECTION 2 - CONTROL OF WORK

- 2.1 **AUTHORITY OF PROCUREMENT OFFICER** - The PROCUREMENT OFFICER shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed, the manner of performance and rate of progress of the work, and compensation for work performed, interpretation of the contract and fulfillment of the contract on the part of the CONTRACTOR. The PROCUREMENT OFFICER shall have authority to enforce and make effective such decisions and orders which the CONTRACTOR fails to carry out properly and diligently. The decision of the PROCUREMENT OFFICER shall be final.
- 2.2 **COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS** - These specifications, plans, special provisions, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

SECTION 3 - CONTROL OF MATERIAL AND EQUIPMENT

- 3.1 **DEFECTIVE MATERIALS** - All materials not conforming to the requirements of these specifications or the special provisions shall be considered defective and all such materials, whether in place or not, shall be rejected. They shall be removed immediately from the site of the work, unless otherwise permitted by the PROCUREMENT OFFICER. No rejected materials, the defects of which having been subsequently corrected, shall be used until approval in writing has been given by the PROCUREMENT OFFICER. Upon failure on the part of the CONTRACTOR to comply promptly with any order to remove and replace defective materials, the PROCUREMENT OFFICER may remove and replace defective material and deduct the cost of removal and replacement from any monies due or to become due the CONTRACTOR.
- 3.2 **TRADE NAMES AND ALTERNATES** - Substitution of material or equipment will not be allowed except under the following unforeseen circumstances:

1. If a specified or prequalified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the CONTRACTOR which would cause an abnormal delay in the project completion.
2. If a specified or prequalified item is found to be unusable due to change or other circumstances.
3. If the CONTRACTOR is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the PROCUREMENT OFFICER determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing by the CONTRACTOR and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Any savings in cost will accrue to the STATE and any additional cost for the substituted items will be paid for by the CONTRACTOR.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles, or materials shall be upon the bidder or CONTRACTOR and he shall furnish, at his own expense, all information necessary or related thereto as required by the PROCUREMENT OFFICER. The PROCUREMENT OFFICER shall be the sole judge as to the comparative quality and suitability of alternate equipment, articles or materials and his decisions shall be final.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the PROCUREMENT OFFICER reserves the right to deny any request he deems irregular or not in the best interest of the STATE.

- 3.3 FINAL INSPECTION - Upon notice from the CONTRACTOR of the completion of the work, the PROCUREMENT OFFICER shall inspect the work performed.

If the work is unsatisfactory in whole or in part, the PROCUREMENT OFFICER shall notify the CONTRACTOR of the work necessary for final completion and acceptance and the CONTRACTOR shall forthwith perform the work required by the PROCUREMENT OFFICER. Upon performance of such required work by the CONTRACTOR, another inspection shall be made which shall constitute the final inspection if the work is completed satisfactorily.

After final inspection and acceptance of the work, the CONTRACTOR shall be notified by the PROCUREMENT OFFICER in writing of such acceptance within ten (10) days after completion of final inspection, or as soon thereafter as is practicable.

- 3.4 TERMINATION OF CONTRACTOR'S RESPONSIBILITY - The contract will be considered complete when all work has been completed, the final inspection made, the work accepted by the PROCUREMENT OFFICER, and the final estimate paid. The CONTRACTOR will then be released from further obligation except as set forth in the contract and bond.

TIME OF PERFORMANCE

1. The CONTRACTOR shall provide the required maintenance services under this Contract from **July 1, 2006**, to and including **June 30, 2007**, unless this Contract is sooner terminated as hereinafter provided.

2. **Option to Extend Contract.** Unless terminated, this Contract may be extended for not more than two (2) additional twelve-month periods, subject to a sole source approval by the Chief Procurement Officer, and upon mutual agreement in writing at least sixty (60) days prior to expiration of this Contract and the execution of a supplemental agreement.

This Contract may be extended provided that the Contract price shall remain the same or is adjusted per the Contract Price Adjustment provision stated herein.

The CONTRACTOR or the STATE may terminate the extended Contract at any time upon sixty (60) days prior written notice.

3. **Contract Price Adjustment.** The Contract price may be adjusted at the beginning of each extension period. The increase shall not exceed the percentage increase in the overall Consumer Price Index for Hawaii for the previous year.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for all services satisfactorily performed by the CONTRACTOR under this Contract, the STATE agrees, subject to the availability of funds, accounting and procedures and controls and allotments to be made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, Hawaii Revised Statutes, to pay to the CONTRACTOR a total sum of money not to exceed **SEVENTY-FOUR THOUSAND THREE HUNDRED FORTY-THREE AND 99/100 DOLLARS (\$74,343.99)** which shall be paid from Appropriation Account No. _____ and shall be paid in monthly installments upon the submission by the CONTRACTOR of invoices in triplicate for the services to be provided in accordance with Attachment 1 "Scope of Services."

SPECIAL CONDITIONS

1. For purposes of this Contract, paragraph 6, titled, "Liquidated Damages," on page 2 of the Contract is hereby deleted from the Contract and has no operative effect between the parties.

2. Modification of General Conditions. For purposes of this Contract, paragraph 7, subparagraphs 19.g., 20.b., paragraph 22, paragraph 28 and subparagraphs 28.a. and 28.b., and paragraph 37 on pages 3,12,12,13,15 and 16 respectively, of the General Conditions are modified to read as follows:

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent or willful acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

Neither the CONTRACTOR nor the STATE shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of the party or parties. Reasonable control under this Contract shall be at the sole judgment of the STATE."

19.g. CPO approval. If a modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract changes the original scope of the Contract, or increases the original Contract price by ten per cent (10%) or more, the prior approval of the CPO is required."

20.c. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the STATE is prejudiced by the delay in notification."

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another Contract."

28. Audit of Books and Records of the CONTRACTOR. The CONTRACTOR agrees that its books and records, insofar as they pertain to parts and/or services provided under this Contract will be at reasonable hours, be subject to audit and inspection at the CONTRACTOR's facility by the STATE at the STATE's sole expense. The audit will be limited to verification of material used and service work performed and verification of invoice quantities and shipment receipts. Nothing contained herein authorizes the STATE to audit books and records of the CONTRACTOR which contains confidential information regarding products and service cost and/or pricing."

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, and representations, oral or written, express or implied,

between the STATE and the CONTRACTOR other than as set forth or as referred to herein. This Contract may not be altered, amended, or modified except by written agreement signed by a duly authorized representative of each party."

3. Addition of General Conditions. For purposes of this Contract, paragraph 20 on page 12 of the General Conditions is hereby amended to include the following subparagraph:

20.e. CPO approval. If a contract change order changes the original scope of the **Contract**, or increases the original **Contract** price by ten per cent (10%) or more, the prior approval of the CPO is required."

4. Deletion of General Conditions. For purposes of this Contract subparagraphs 21.a. and 21.b. on page 13, and paragraph 29 and paragraph 30 on page 15 of the General Conditions are hereby deleted and have no operative effect between the parties due to the PROCUREMENT OFFICER's waiver of the requirement of section 3-122-123 (1) HAR.

5. Contract Exclusion. The CONTRACTOR shall not be responsible for the maintenance cost of any transmission line, antenna, or tower. Such maintenance shall be furnished upon request by the STATE at material and labor rates prevailing at the time of each call. . Maintenance does not include the repair or replacement of equipment which has otherwise become defective, including, but not limited to, damage caused by accidents, physical or electronic abuse or misuse of the equipment, acts of God, fires, flooding or other casualty or damage resulting from the equipment's exposure to environmental conditions not attributable to the CONTRACTOR's responsibility. The CONTRACTOR shall be responsible for the cost of replacement and/or repair(s) to the equipment which the STATE determines to be due to CONTRACTOR's negligence or noncompliance to the terms and conditions of this contract.